

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

GORDON MAAG,

Plaintiff,

VS.

CHICAGOLAND CHAMBER OF COMMERCE,
et al.,

Defendants.

No. 3:05-cv-00711-DRH

Hon. David R. Herndon

**DEFENDANTS ILLINOIS STATE CHAMBER OF COMMERCE AND ILLINOIS
COALITION FOR JOBS, GROWTH AND PROSPERITY'S
MOTION TO STAY**

Defendants Illinois State Chamber of Commerce and Illinois Coalition for Jobs, Growth and Prosperity (“Defendants”) hereby move for a stay of this case. In the absence of a stay, Defendants and others would be forced to devote substantial time and expense to defending parallel actions in state and federal court. In addition, allowing this case and Plaintiff Gordon Maag’s substantially identical state court case to proceed on parallel tracks would waste judicial resources by requiring two judges to preside over essentially the same case. In further support of their motion, Defendants state as follows:

1. The abstention doctrine announced in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), helps prevent unnecessary parallel litigation in state and federal courts. See *Clark v. Lacy*, 376 F.3d 682, 685 (7th Cir. 2004). Maag’s decision to file two defamation lawsuits over essentially the same dispute – the campaign against him in

judicial elections in 2004 – presents precisely the type of problem that the *Colorado River* doctrine was designed to avoid.

2. Though a motion to stay is not one of the pre-answer defenses specifically listed in Fed.R.Civ.P. 12(b), courts routinely entertain motions to stay prior to the filing of an answer. *See, e.g., Int'l Ass'n of Entrepreneurs v. Angoff*, 58 F.3d 1266, 1271 (8th Cir. 1995) (“While pre-answer motions are ostensibly enumerated in Fed.R.Civ.P. 12(b), district courts have the discretion to recognize additional pre-answer motions, including motions to stay cases within federal jurisdiction when a parallel state action is pending.”). At least one court in this District appears to have followed this procedure. *See Hicks v. Midwest Transport, Inc.*, No. 2004-CV-4263-JPG, 2005 WL 1267463, at *4 (S.D. Ill. May 16, 2005) (Gilbert, J.) (after denying defendant’s motion to stay based on *Colorado River*, ordering defendant to respond to complaint within ten days).

3. In further support of their motion, Defendants submit the accompanying memorandum of law.

WHEREFORE, the Illinois State Chamber of Commerce and the Illinois Coalition for Jobs, Growth and Prosperity respectfully request that this Court grant a stay of this case in favor of the parallel, first-filed and more advanced state court case. They also request that the Court grant them an extension of time to answer or otherwise respond to the First Amended Complaint until after the Court rules on this motion and after any stay is vacated, and award any other appropriate relief.

Dated: October 27, 2005

Respectfully submitted,

ILLINOIS STATE CHAMBER OF
COMMERCE and ILLINOIS COALITION
FOR JOBS, GROWTH AND
PROSPERITY

By: s/ Richard J. O'Brien
One of their attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2005, I electronically filed Defendants Illinois State Chamber of Commerce and the Illinois Coalition for Jobs, Growth and Prosperity's Motion to Stay with the Clerk of Court using the CM/ECF system, and I hereby certify that on October 27, 2005, I sent by express courier the documents to the following:

Rex Carr
The Rex Carr Law Firm, LLC
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East St. Louis, IL 62201

Respectfully submitted,

s/ Richard J. O'Brien

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